

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
(EL PASO DIVISION)**

STEPHANIE HERNANDEZ,

Plaintiff,

vs.

CVS RX SERVICES, INC.,

Defendant.

Case No. 3:20-cv-103

DEFENDANT’S NOTICE OF REMOVAL UNDER 28 U.S.C. §§ 1332, 1441 AND 1446

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant, CVS Rx Services, Inc. (“CVS” or “Defendant”), hereby removes the above-captioned action from the 243rd District Court, El Paso County to the United States District Court for the Western District of Texas, El Paso Division, on the basis of diversity jurisdiction. In support of removal, the Defendant states as follows:

1. State Court Action

CVS Rx Services, Inc. was named as a Defendant in a civil action brought in the 243rd District Court in and for El Paso County, Texas, styled, *Stephanie Hernandez v. CVS Rx Services, Inc.*, Case No. 2020DCV0947. A true and correct copy of all process and pleadings served upon CVS are attached hereto as Exhibits B-1 Through B-3 in compliance with 28 U.S.C. § 1447(b). In this action, Plaintiff

Stephanie Hernandez (“Plaintiff”) alleges that CVS terminated her employment as a staff pharmacist on or about July 10, 2019, for sharing her confidential employee credentials. Plaintiff asserts this was a pretextual reason and CVS, instead, terminated her in retaliation for her alleged protected activity. On March 25, 2020, Plaintiff served CVS with process in this matter. *See* Exhibit B-4.

2. Requirements for Removal

In accordance with 28 U.C.S. § 1446(a), Defendant attaches the following to its Notice of Removal:

Exhibit A: Index of all matters filed in the State Court Action that clearly identifies each document and indicates the document was filed.

Exhibit B: Copies of all process and pleadings in the State Court Action, individually tabbed and arranged in order of filing under Tabs B1 through B4.

Exhibit C: Declaration of Melanie K. Luker.

Exhibit D: Notice of Filing Notice of Removal to be filed with the Clerk of the Court for El Paso County, Texas.

3. Diversity Jurisdiction

This Court has original jurisdiction of this action pursuant to 28 U.S.C. §1332, and it may be removed to this Court pursuant to 28 U.S.C. § 1441. As shown below, this is a civil action in which the Plaintiff is a resident of the State of Texas and Defendant is not, and in which the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs. Accordingly, removal is proper in this case.

a. Diversity of Citizenship

For the purposes of diversity jurisdiction, a corporation is deemed a citizen of

the state of its incorporation and a citizen of the state constituting its principal place of business. *Pacheco v. Am. Smelting & Ref. Co.*, 2016 U.S. Dist. Lexis 11613 *4 – 5 (W.D. Tex. 2005) (*citing* 28 U.S.C. § 1332(c) (2005) (for purposes of establishing diversity of citizenship, a corporation is deemed a citizen of the state of its incorporation and a citizen of the state constituting its principal place of business)). In *Hertz Corporation v. Friend*, the United States Supreme Court held that “the phrase ‘principal place of business’ [in 28 U.S.C. § 1332(c)(1)] refers to the place where the corporation's high level officers direct, control, and coordinate the corporation's activities.” 130 S. Ct. 1181, 1186, 175 L. Ed. 2d 1029 (2010); *see Balachander v. AET, Inc.*, 2011 U.S. Dist. Lexis 109787 *1-2 (S.D. Tex. 2011) Defendant CVS Rx Services, Inc. is a corporation organized under the laws of the State of New York. (*See* Declaration of Melanie Luker (“Luker Decl.”) at ¶ 3, attached as Exhibit C.) CVS Rx Services, Inc.’s principal place of business is Rhode Island. (*Id.* at ¶ 4.)

Upon information and belief, Plaintiff is a resident of the State of Texas. (*See* Petition, ¶ 2.) There is, therefore, complete diversity of citizenship between Plaintiff and Defendant. *See* 28 U.S.C. § 1332.

b. Amount in Controversy

Plaintiff’s Petition explicitly states, “... Plaintiff pleads that she anticipates at this time that the amount of damages she will request the jury to assess at trial will be between \$200,000 to \$1,000,000.” (*See* Petition, ¶ 14.) Therefore, the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs and the amount in controversy is satisfied for diversity jurisdiction.

4. Timeliness of Notice of Removal

CVS was served with process on March 25, 2020. Removal of this action is, therefore, timely under 28 U.S.C. § 1446(b).

5. As required by 28 U.S.C § 1446(d), the Defendant will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the Court for El Paso County, Texas, where the State Court Action is currently pending. *See* Exhibit D.

6. Relief Requested

CVS requests that the United States District Court for the Western District of Texas assume jurisdiction over the above-captioned action and issue such further orders and processes as may be necessary to bring before it all parties necessary for the trial of this action.

DATED this 17th day of April, 2020.

Respectfully submitted,

/s/ R. Shawn Oller

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2020, I electronically submitted the foregoing document with the Clerk of the Court using the ECF system for filing. Based on the records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF Registrants:

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